

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

MARK HARDT,

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF
ALBANY, AND PARISH OF ST. JOHN THE
EVANGELIST AND ST. JOSEPH;*Defendants.*

Index No.

VERIFIED COMPLAINT**JURY TRIAL DEMANDED**

Plaintiff Mark Hardt, by his attorneys Weitz & Luxenberg PC, brings this action against The Roman Catholic Diocese of Albany and the Parish of St. John the Evangelist and St. Joseph, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Albany pursuant to CPLR 503 in that one or more Defendants reside in this County.

PARTIES

4. Plaintiff Mark Hardt (“Plaintiff”) is an individual residing in McIntosh County, Georgia.

5. Defendant the Roman Catholic Diocese of Albany, New York (“Diocese of Albany”) is a religious corporation organized pursuant to the Religious Corporations Law, with its principal office at 40 North Main Avenue in Albany, Albany County, New York.

6. At all relevant times, the Diocese of Albany created, oversaw, managed, controlled, directed and operated parishes or churches of the Diocese of Albany including St. Joseph’s Roman Catholic Church.

7. At all relevant times, the Diocese of Albany managed, supervised, employed, directed and/or controlled all priests and seminary students assigned to work in parishes or churches of the Diocese of Albany including Father John Minkler.

8. At all relevant times, priests and seminary students assigned to the Diocese of Albany were agents, managers, directors, or employees of the Diocese of Albany.

9. Defendant Parish of St. John the Evangelist and St. Joseph, formerly known as St. Joseph’s Roman Catholic Church, (“Parish of St. John and St. Joseph”) is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 53 Herrick Street, Rensselaer, New York.

10. At all relevant times, Parish of St. John and St. Joseph was and has been a Roman Catholic Church or parish within and under the authority of the Diocese of Albany which created, oversaw, managed, controlled, directed and operated Parish of St. John and St. Joseph.

11. At all relevant times, priests assigned to Parish of St. John and St. Joseph were agents, managers, directors, or employees of Parish of St. John and St. Joseph and the Diocese of Albany.

12. At all relevant times, St. Joseph's School was a Roman Catholic parochial school within and under the authority of the Diocese of Albany and created, overseen, managed, controlled, directed and operated by St. Joseph's Roman Catholic Church now known as Parish of St. John and St. Joseph.

13. At all relevant times, priests and seminary students assigned to St. Joseph's School were agents, managers, directors, or employees of St. Joseph's School, Parish of St. John and St. Joseph, and the Diocese of Albany.

FACTS COMMON TO ALL CLAIMS

14. Plaintiff and his family were parishioners of and attended Parish of St. John and St. Joseph, formerly known as St. Joseph's Roman Catholic Church in Rensselaer, New York when he was a child.

15. Plaintiff was enrolled as a student at St. Joseph's School in Rensselaer, New York.

16. During the times relevant to the allegations set forth herein, Defendants Diocese of Albany and Parish of St. John and St. Joseph were responsible for overseeing, managing, controlling, directing and operating St. Joseph's School.

17. Father John Minkler was a cleric assigned by Defendant Diocese of Albany to Parish of St. John and St. Joseph, formerly known as St. Joseph's Roman Catholic Church.

18. Through his position at, within, or for the other Defendants, Defendant Father John Minkler was put in direct contact with Plaintiff, a minor parishioner of the Diocese of Albany.

19. In approximately 1965, Plaintiff was an eight year old altar boy at Defendant Parish of St. John and St. Joseph and student at St. Josephs School.

20. In approximately 1965, when Plaintiff was approximately eight years of age, he was repeatedly sexually abused by Father John Minkler at St. Josephs Roman Catholic Church.

21. Father John Minkler used these encounters, gained through his position at Parish of St. John and St. Joseph and St. Joseph's School which granted him access to Defendant Parish of St. John and St. Joseph's young parishioners, when Plaintiff was approximately eight years of age, to sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

22. Father John Minkler continued to sexually abuse Plaintiff until Plaintiff was approximately ten years old in approximately 1968 and stopped attending church.

23. At all times material hereto, Father John Minkler was under the management, supervision, employ, direction and/or control of Defendants Diocese of Albany and Parish of St. John and St. Joseph.

24. Defendants Diocese of Albany and Parish of St. John and St. Joseph knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father John Minkler who sexually abused Plaintiff.

25. Defendants had the responsibility to manage, supervise, control and/or direct priests and seminary students who served at Parish of St. John and St. Joseph, and specifically had a duty not to aid pedophiles such as Father John Minkler by allowing them and/or, assigning, maintaining, and/or appointing them to positions with, access to minors.

26. Defendants Diocese of Albany and Parish of St. John and St. Joseph had a duty to the Plaintiff to ensure that Defendants did not offer opportunities for pedophiles to approach and assault vulnerable children. Defendants knew and/or should have known that Father John Minkler used his positions at Parish of St. John and St. Joseph and St. Joseph's School to harm minor children, including Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

27. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendants' actions, as well as other damages related thereto, as a result of his childhood sexual abuse.

28. As a direct result of Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and

physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendants' sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction (As to All Defendants)

29. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 28 as if fully set forth herein.

30. Defendants Diocese of Albany and Parish of St. John and St. Joseph at all relevant times represented or otherwise indicated to parishioners of Parish of St. John and St. Joseph and parents of St. Joseph's School that minor children would be physically safe while in the presence of priests and seminary students assigned to Parish of St. John and St. Joseph. Defendants Diocese of Albany and Parish of St. John and St. Joseph entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the presence of a priest or and seminary student assigned to the Parish of St. John and St. Joseph, Plaintiff would be kept reasonably safe and that that priests or seminary students would not sexually abuse Plaintiff.

31. Defendants Diocese of Albany and Parish of St. John and St. Joseph owed a duty of care to all minor persons, including Plaintiff, who were likely to come in contact with Father

John Minkler, to ensure that Father John Minkler did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

32. Defendants Diocese of Albany and Parish of St. John and St. Joseph knew or should have known of Father John Minkler's propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of, the injuries' occurrence.

33. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

34. Father John Minkler sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while assigned to Parish of St. John and St. Joseph.

35. Defendants Diocese of Albany and Parish of St. John and St. Joseph negligently hired, retained, directed, and supervised Father John Minkler as they knew or should have known that Father John Minkler posed a threat of sexual abuse to children.

36. Defendants Diocese of Albany and Parish of St. John and St. Joseph were negligent in failing properly to supervise Father John Minkler.

37. At all times material hereto, Defendants Diocese of Albany and Parish of St. John and St. Joseph were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

38. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

39. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally, and/or in the alternative, for compensatory damages, and punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION
Negligence/Gross Negligence
(As to All Defendants)**

40. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 28 as if fully set forth herein.

41. At all times material hereto, with regard to the allegations contained herein, Father John Minkler was under the supervision, employ, direction and/or control of Defendants Diocese of Albany and Parish of St. John and St. Joseph.

42. Defendants Diocese of Albany and Parish of St. John and St. Joseph owed Plaintiff, at all relevant times, a minor, a duty to protect him from Father John Minkler's sexual deviancy and the consequent damages, both prior to and/or subsequent to Father John Minkler's misconduct.

43. Defendants Diocese of Albany and Parish of St. John and St. Joseph knew, or were negligent in not knowing, that Father John Minkler posed a threat of sexual abuse to children.

44. The acts of Father John Minkler described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with the Defendants Diocese of Albany and Parish of St. John and St. Joseph.

45. Defendants Diocese of Albany and Parish of St. John and St. Joseph's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

46. Defendants Diocese of Albany and Parish of St. John and St. Joseph gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others; failed adequately to supervise the activities of Father John Minkler; permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

47. At all times material hereto, Defendants Diocese of Albany and Parish of St. John and St. Joseph were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

48. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

49. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

**THIRD CAUSE OF ACTION
Breach of Non-Delegable Duty
(As to All Defendants)**

50. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 28 as if fully set forth herein.

51. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Diocese of Albany and Parish of St. John and St. Joseph for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in educational, religious, youth, and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants.

52. Plaintiff was a vulnerable child when placed within the care of the Defendants Diocese of Albany and Parish of St. John and St. Joseph.

53. As a consequence, Defendants Diocese of Albany and Parish of St. John and St. Joseph were in the best position to prevent Father John Minkler's sexual abuse of Plaintiff, to learn of said sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Father John Minkler's sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

54. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Albany and Parish of St. John and St. Joseph, Defendants breached their non-delegable duty to Plaintiff.

55. At all times material hereto, Father John Minkler was under the supervision, employ, direction and/or control of Defendants Diocese of Albany and Parish of St. John and St. Joseph.

56. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

57. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

**FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty
(As to All Defendants)**

58. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 28 as if fully set forth herein.

59. While he was a minor, Plaintiff was entrusted by him parents to the control and supervision of Father John Minkler, a priest of the Defendants Diocese of Albany and Parish of St. John and St. Joseph. During the times that Plaintiff was entrusted to Father John Minkler, Father John Minkler was under the supervision and control of Defendants Diocese of Albany and Parish of St. John and St. Joseph.

60. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Albany and Parish of St. John and St. Joseph. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision

of Defendants Diocese of Albany and Parish of St. John and St. Joseph. This entrustment of the Plaintiff to the care and supervision of Defendants Diocese of Albany and Parish of St. John and St. Joseph, while the Plaintiff was a minor child, required Defendants Diocese of Albany and Parish of St. John and St. Joseph to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect him due to his infancy and vulnerability.

61. Pursuant to their fiduciary relationship, Defendants Diocese of Albany and Parish of St. John and St. Joseph were entrusted with the well-being, care, and safety of Plaintiff.

62. Pursuant to their fiduciary relationship, Defendants Diocese of Albany and Parish of St. John and St. Joseph assumed a duty to act in the best interests of Plaintiff.

63. Defendants Diocese of Albany and Parish of St. John and St. Joseph breached their fiduciary duties to Plaintiff.

64. At all times material hereto, Defendants Diocese of Albany and Parish of St. John and St. Joseph were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

65. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

66. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**FIFTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress
(As to All Defendants)**

67. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 28 as if fully set forth herein.

68. As described above, the actions of Defendants Diocese of Albany and Parish of St. John and St. Joseph their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

69. Defendants Diocese of Albany and Parish of St. John and St. Joseph's actions and/or inactions endangered Plaintiff's safety and caused him to fear for his own safety.

70. As a direct and proximate result of Defendants Diocese of Albany and Parish of St. John and St. Joseph's actions and/or inactions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to mental and emotional distress.

71. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**SIXTH CAUSE OF ACTION
Breach of Duty *in Loco Parentis*
(As to All Defendants)**

72. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 28 as if fully set forth herein.

73. While he was a minor, Plaintiff was entrusted by his parents to the control and supervision of Father John Minkler, a priest of Defendants Diocese of Albany and Parish of St. John and St. Joseph. During the times that Plaintiff was entrusted to Father John Minkler, Father John Minkler was under the supervision and control of Defendants Diocese of Albany and Parish of St. John and St. Joseph. These Defendants owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

74. Defendants Diocese of Albany and Parish of St. John and St. Joseph breached their duty to act *in loco parentis*.

75. At all times material hereto Defendants Diocese of Albany and Parish of St. John and St. Joseph were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

76. As a direct result of Defendants Diocese of Albany and Parish of St. John and St. Joseph's conduct, Plaintiff has suffered the injuries and damages described herein.

77. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 18, 2019

New York, New York

Respectfully Submitted,

/s/ Samantha Breakstone
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